

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

INTELLECTUAL VENTURES I LLC and
INTELLECTUAL VENTURES II LLC,

Plaintiffs/Counter-Defendants,

v.

CAPITAL ONE FINANCIAL
CORPORATION; CAPITAL ONE BANK
(USA), NATIONAL ASSOCIATION; and
CAPITAL ONE, NATIONAL
ASSOCIATION,

Defendants/Counter-Plaintiffs,

v.

INTELLECTUAL VENTURES
MANAGEMENT, LLC; INVENTION
INVESTMENT FUND I, L.P.; INVENTION
INVESTMENT FUND II, LLC;
INTELLECTUAL VENTURES FUND 83
LLC, and JOHN DOES 1-2000,

Additional Counter-Defendants.

Civil Action No. 1:13-CV-00740-AJT-TCB

**CAPITAL ONE'S RESPONSE AND STATEMENT OF NON-OPPOSITION
TO IV'S MOTION FOR VOLUNTARY DISMISSAL, WITH PREJUDICE,
OF CLAIMS UNDER UNITED STATES PATENT NO. 6,182,894**

In this case, Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC (collectively “IV”) have asserted five patents against Defendants Capital One. IV has moved (Doc. 172) under Fed. R. Civ. P. 41(a)(2) for voluntarily dismissal *with prejudice* of all of IV’s claims under one of these patents, United States Patent No. 6,182,894 (“’894 patent”), because of IV’s determination that the claims of that patent “are at risk of being found invalid” in light of prior art identified by Capital One (Doc. 173 at 2, 5) and because of IV’s desire to avoid such a judicial determination of invalidity. Capital One does not oppose this dismissal.

IV has also moved for dismissal *without prejudice* of Capital One’s counterclaim Counts Five and Six concerning the ’894 patent. IV has moved to dismiss its claims under the ’894 patent with prejudice and has acknowledged that this dismissal will have the same effect as a covenant not to sue Capital One in the future under the ’894 patent based upon any of Capital One’s now “ongoing” activities (Doc. 173 at 6-7). In view of the breadth of IV’s allegations and contentions in this matter, Capital One agrees that no case or controversy will exist regarding the ’894 patent once IV’s claim for infringement of that patent is dismissed with prejudice. For that reason, Capital One does not oppose dismissal of its counterclaim Counts Five and Six *without prejudice*.

Capital One reserves all rights to assert claims or counterclaims concerning the ’894 patent should a case or controversy arise in the future, and Capital One reserves the right to seek recovery of fees, expenses, and costs related to its defense and prosecution of the claims and counterclaims related to the ’894 patent at an appropriate future date.

For the foregoing reasons, Capital One does not oppose entry of an order of dismissal in the form proposed by IV (Doc. 172-1).

Dated: January 10, 2014

**CAPITAL ONE FINANCIAL CORPORATION
CAPITAL ONE BANK (USA), N.A.
CAPITAL ONE, N.A.**

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2014, I electronically served the foregoing to Plaintiffs' counsel as indicated:

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